Alexander M. Schack, Esq., Bar No. 99126
Lee T. Patajo, Esq., Bar No. 230667
LAW OFFICES OF ALEXANDER M. SCHACK
16870 West Bernardo Drive, Suite 400
San Diego, CA 92127
Tel: (858) 485-6535
Fax: (858) 485-0608
Attorney for Plaintiffs

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY BRANCH

RACHEL GASSO, on behalf of herself and all consumers similarly situated, Plaintiffs, v. ALLSTAR MARKETING GROUP, INC., ALLSTAR MARKETING GROUP, LLC., ALLSTAR MARKETING CORP., and DOES 1-25, inclusive, Defendants.	CASE NO. **37-2007-00057263-CU-BT-NC** CLASS ACTION COMPLAINT 1. Violation of the Unfair Competition Law 2. Violation of False Advertising Law 3. Violation of Consumers Legal Remedies Act 4. Fraud and Deceit

Plaintiff, Rachel Gasso, on behalf of herself and the general public, and all consumers similarly situated, and demanding trial by jury, complains and alleges upon information and belief as follows:

INTRODUCTION

1. This civil consumer protection representative action is brought to remedy violations by Defendants Allstar Marketing Group, Inc., Allstar Marketing Group, LLC, and Allstar Marketing Corp. (hereinafter "Allstar") of state consumer protection, false advertising and unfair competition statutes in connection with Defendants' course of conduct over the last four years in the manufacture, sale, marketing, and distributing of their "Auto Cool" product to consumers. Defendants' employ

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misleading representations and have failed to disclose material information for its claims associated with the use of its product Auto Cool, wherein it is represented that such product keeps your car cool no matter how long it has been left in the sun. Such claims are untrue. In fact, the very name of the product, Auto Cool, is deceptive, as the product does not keep your auto cool.

2. Defendants are part of the internet products shopping industry that has experienced rapid growth over the past decade and is now a multi-billion dollar industry. Defendants' marketing and advertising of its Auto Cool product is deceptive, misleading and injurious to consumers.

3. Defendants are and have been aware of the misrepresentations used in supporting their claims. In fact, Defendants have not adequately disclosed to consumers the fact that Auto Cool does not work as advertised. Defendants' decision to inadequately inform consumers of the lack of benefits associated with Auto Cool is likely due to the fact that Defendants' charged as much as $19.99 to consumers for their product and their revenues from such sales have been in the millions of dollars. Thus, Defendants knowingly and recklessly withheld important information from consumers in conscious disregard of consumers' rights and Defendants' responsibilities. Such actions were, in whole or in part, undertaken to preserve Defendants' extraordinary revenues from Auto Cool and thus constitute fraud, malice, and oppression directed against consumers of Auto Cool.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to California Business and Professions Code §§ 17203, 17204, 17500, Civil Code § 1780 and other provisions of California law. This Complaint is not based on federal law. The amount in controversy for each member of the general public is less than $75,000.00.

5. Venue as to each Defendant is proper in this Court pursuant to California Code of Civil Procedure §§ 395 and 395.5, California Civil Code § 1780, and California Business and Professions Code §§ 17202 and 17203. Defendants either maintain an office, transact business, have an agent, or are found in the County of San Diego and are within the jurisdiction of this Court. The unlawful acts alleged herein had a direct effect on consumers within the State of California and, more particularly, within the County of San Diego.

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THE PARTIES

A. Plaintiff

6. Representative Plaintiff Rachel Gasso is, and at all times herein mentioned, a resident of the County of San Diego, who, during the relevant period, purchased Auto Cool for her own use and not for resale. Plaintiff used the product as directed, and it did not work as advertised. The damages or losses as to Plaintiff individually do not exceed $75,000.00, however calculated, and the aggregate damages are less than $5,000,000, and no federal questions are asserted herein.

B. Defendants

7. Defendants Allstar Marketing Group, Inc., Allstar Marketing Group, LLC, and Allstar Marketing Corp. (hereinafter "Allstar") develops, manufactures, markets or sells Auto Cool. Defendants' transact substantial business throughout the United States and in the State of California. Defendants' principal place of business is in the State of New York. The acts complained of, which are the subject matter of this action, occurred, in part, in the State of California and in this county. During the period of time covered by this Complaint, Defendants engaged in the business of, among other things, designing, manufacturing, marketing, selling, advertising, distributing, promoting or otherwise placing into the stream of commerce, directly or indirectly, its Auto Cool product.

8. The true names and capacities, whether individual, corporate, associate, representative, or otherwise of Defendants named herein as DOES 1-25 are unknown to Plaintiff at this time, and are therefore sued by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend this Complaint to allege the true names and capacities of DOES 1 through 25 when Plaintiff has such information. Each of the DOES 1-25 is in some manner legally responsible for the violations of law alleged herein.

CONSPIRACY, AGENCY, JOINT VENTURE, ALTER EGO

9. Each of the Defendants named herein, including DOES 1-25, acted as the co-conspirator, agent, joint venturer or alter ego of or for the other Defendants with respect to the acts, violations, and common course of conduct alleged herein or is otherwise liable.

10. The acts charged in this Complaint as having been done by Defendants and the DOE Defendants were authorized, ordered, or done by their officers, agents, employees, or representatives,

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while actively engaged in the management of the Defendants' businesses or affairs.

11. Pursuant to Civil Code § 1780 and Business and Professions Code § 17200 *et seq.*, Plaintiff brings this action individually and on behalf of the California general public.

12. This action may be properly maintained as a national class action, pursuant to *Wershba v. Apple Computer, Inc.* (2001) 89 Cal.App.4th 324, and the provisions of § 382 of the California Code of Civil Procedure and Civil Code § 1781 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable. Plaintiff reserves the right to amend this Complaint for such a national class.

FACTUAL ALLEGATIONS

DEFENDANT'S MISLEADING AND DECEPTIVE PRACTICES

13. Defendants are part of the internet products shopping industry that has experienced rapid growth over the past decade and is now a multi-billion dollar industry. California consumers comprise one of the largest markets in the United States for their product shopping on the internet and is one of the largest markets in the world. In California alone, it is estimated that more than $1,000,000,000 in products are purchased over the internet each year. As such, Defendants aggressively market their internet product to such California and U.S. consumers through advertising.

14. Defendants have engaged in a full-scale marketing and advertising campaign aimed at creating the perception that Auto Cool:

> "Keeps your parked car cooler."
>
> "Keeps your car cool no matter how long it has been left in the sun."

This statement is misleading, as is the very name of the product. In fact, the Auto Cool does not cool your car, does not keep a parked car cooler, and does not keep your car cool no matter how long it has been left in the sun. Defendants' marketing, however, clearly conveys and emphasizes the cooling benefits of its product, disregarding the overwhelming information indicating otherwise. As a result, consumers are not adequately informed of the true facts. Nothing in Defendants' marketing or advertising clearly or conspicuously informs consumers that they are purchasing a product that will not cool your car.

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15. Defendants are and have been aware of the lack of truth about the benefits of their Auto Cool product. In fact, consumer reviews and testing throughout the U.S. reveal that the Auto Cool simply does not work as advertised. Defendants have not adequately informed consumers about the facts associated with the purchase of its Auto Cool product. Thus, Defendants knowingly or recklessly withheld important information from consumers in conscious disregard of consumers' rights and Defendants' corporate responsibilities. Such actions were, in whole or in part, undertaken to preserve Defendants' extraordinary revenues from Auto Cool and constitutes fraud, malice, and oppression directed against consumers of Defendants' Auto Cool product.

CLASS ACTION ALLEGATIONS

16. The Class is defined as:

> All individuals who purchased one or more Auto Cool devices from January 1, 2003, to the present. Specifically excluded from the Plaintiff Class are the Defendants herein; officers; directors or employees of Defendants; and any entity in which the Defendants have a controlling interest; the agents, affiliates, legal representatives, heirs, attorneys at law, attorneys in fact or assignees of the Defendants, and any federal, state or local governmental entity. Also specifically excluded are any justice, judge, judicial officer, court personnel or juror assigned to any part of this case.

17. Pursuant to Civil Code § 1780 and Business and Professions Code § 17200 *et seq.*, Plaintiff brings this action individually, on behalf of the general public, and on behalf of all individuals similarly situated.

18. This action may be properly maintained as a class action, pursuant to the provisions of § 382 of the California Code of Civil Procedure and Civil Code § 1781 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable. Plaintiff reserves the right to amend this Complaint for such Class as the following criteria are met:

A. Numerosity: The Plaintiff Class is so numerous that individual joinder of all members is impractical under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, based upon the amount of trade and commerce in the internet products shopping industry, Plaintiff is informed and believes that Defendants sell hundreds of thousands of dollars worth of the Auto Cool annually. Plaintiff is informed and believes that the Plaintiff Class includes many thousands of members.

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B. Common Questions of Law and Fact: Common questions of law and fact exist as to all members of the Plaintiff Class and predominate over any questions which affect only individual members of the Plaintiff Class. These common questions of law and fact include, without limitation:

(1) Whether Defendants' business acts or practices violated the Unfair Competition Law, § 17200 *et seq.* of the California Business and Professions Code ("UCL");

(2) Whether Defendants' conduct violated the False Advertising Law, § 17500 *et seq.* of the California Business and Professions Code ("FAL");

(3) Whether Defendants' conduct violated the Consumers Legal Remedies Act, § 1750 *et seq.* of the California Civil Code ("CLRA");

(4) The class-wide nature of Defendants' course of conduct;

(5) The amount of additional revenues and profits obtained by Defendants attributable to their unlawful conduct;

(6) The appropriate nature of class-wide equitable relief including corrective and remedial action;

(7) Whether the members of the Plaintiff Class are entitled to restitution as a result of Defendants' conduct and, if so, what is the proper measure and appropriate formula to be applied in determining such restitution;

(8) Whether the members of the Plaintiff Class have sustained damages as a result of Defendants' conduct and, if so, what is the proper measure and appropriate formula to be applied in determining such damages; and

(9) Whether the members of the Plaintiff Class are entitled to punitive and exemplary damages as a result of Defendants' acts of fraud, malice and oppression or in conscious disregard of the right of Plaintiff and the Plaintiff Class, and, if so, what is the proper amount of such punitive and exemplary damages.

C. Typicality: Plaintiff's claims are typical of the claims of the members of the Plaintiff Class. Plaintiff has been injured in fact and has lost money or property as a result of the

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Defendants' acts. Plaintiff and all members of the Plaintiff Class sustained injuries and damages arising out of Defendants' common course of conduct in violation of the laws complained of herein. The injuries of each Class Member were caused directly by Defendant's wrongful conduct in violation of the law as alleged herein.

D. Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the Plaintiff Class. Plaintiff purchased the Auto Cool during the Class Period, and is an adequate representative of the Class as she has no interests which are adverse to the interests of absent Class Members. Plaintiff has retained counsel who have substantial experience and success in the prosecution of complex consumer protection class actions of this nature.

19. The policies, procedures and practices described herein relating to the marketing of Defendant's Auto Cool are part of a common course of conduct of unlawful deceptive acts and practices undertaken by Defendants. As a result, the issues affecting Plaintiff and all members of the Plaintiff Class in common predominate over those which affect only the interests of any individual Class Member.

20. A class action is superior to other available means for the fair and efficient adjudication of this controversy since individual joinder of all members of the Plaintiff Class is impractical. Furthermore, as the damages or injuries suffered by each individual member of the Class may be relatively small, the expenses and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them. The cost to the court system of adjudications of individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

FIRST CAUSE OF ACTION

For Violation of the Unfair Competition Law, California Business and Professions Code §§ 17200 *et seq.*

(Against All Defendants)

21. Plaintiff on behalf of herself, the general public, and all others similarly situated, realleges, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 20 hereof.

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22. All marketing, advertising, publicity and promotional efforts as described herein undertaken by Defendants concerning the Auto Cool product, constitute unfair competition, in violation of California Business and Professions Code §§ 17200 *et seq.*, the Unfair Competition Law ("UCL"). Defendants have and continue to engage in conduct that is unlawful, unfair or fraudulent through a pattern of concealment that misleads and deceives the public with respect to the true nature of its Auto Cool product, by a pattern of failing to inform consumers and by misleading the consumer about the efficacy of the product through false and misleading statements and deceptive and unfair policies, procedures and acts.

23. The acts, omissions, misrepresentations, practices and nondisclosures of Defendants, as alleged herein, constituted and continue to constitute unfair, unlawful and/or fraudulent business practices within the meaning of Business and Professions Code § 17200 *et seq.*, including, but in no way limited to, the following:

A. the violation of the Business and Professions Code § 17500 *et seq.* ("FAL"); the violation of Civil Code § 1750 *et seq*, the Consumer Legal Remedies Act ("CLRA"), set forth in this Complaint;

B. Defendants' acts, omissions, misrepresentations, practices, and nondisclosures as set forth in this Complaint, whether or not in violation of the laws set forth herein, are otherwise unfair, unconscionable, unlawful and fraudulent;

C. Defendants' acts and practices are unfair to consumers within the meaning of Business and Professions Code § 17200 *et seq.*, and

D. Defendants' acts and practices are fraudulent within the meaning of Business and Professions Code § 17200 *et seq.*

24. Plaintiff, the general public, and the members of the Plaintiff Class, accordingly are entitled to equitable relief including injunctive relief, remedial or corrective action, full restitution and/or disgorgement.

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SECOND CAUSE OF ACTION

Violation of False Advertising Law, California

Business and Professions Code §§ 17500 *et seq*.

(Against All Defendants)

25. Plaintiff, on behalf of herself, the general public, and all others similarly situated, realleges, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 24 hereof.

26. The advertising, marketing and other promotional efforts undertaken by Defendants constitute advertising devices disseminated by Defendants from and into California, which contain and continue to contain statements concerning the efficacy of Defendants' Auto Cool product that are untrue and/or misleading in violation of California Business and Professions Code §§ 17500 *et seq*., the False Advertising Law ("FAL"), including but not limited to the above.

27. Plaintiff, the general public, and all others similarly situated, accordingly are entitled to equitable relief including injunctive relief, remedial or corrective action, full restitution and/or disgorgement.

THIRD CAUSE OF ACTION

Violation of Consumers Legal Remedies Act

California Civil Code § 1750 *et seq*.

(Against All Defendants)

28. Plaintiff, on behalf of herself, the general public, and all others similarly situated, realleges, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 27 hereof.

29. The acts and practices heretofore described were intended to result in the sale of products and services to the consuming public. These acts violated, and continue to violate, the CLRA (Cal.Civil Code § 1750 *et seq*.) in at least the following areas:

A. representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship,

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approval, status, affiliation, or connection which he or she does not have;

B. representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

C. advertising goods or services with intent not to sell them as advertised;

D. representing that services have characteristics, uses, benefits or quantities which they do not have; and

E. representing that the subject of the transaction has been supplied in accordance with a previous representation when it has not.

30. Plaintiff seeks an order enjoining the above-described wrongful acts and practices of Defendants and awarding restitution, rescission and/or disgorgement of Defendants' revenues and profits from the sale of its Auto Cool product.

31. Pursuant to Civil Code § 1782(a), on or about August 27, 2007, Plaintiff, through her counsel, made a written demand on behalf of herself and the potential Plaintiff Class that Defendants cease and desist their unlawful conduct and offer to make appropriate restitution, correction or remedy, including but in no way limited to, giving notice to all persons who purchased the product and giving such other notice as may be required under Civil Code § 1782. Defendants failed to agree as provided by law to cease and desist, to give proper notice or to offer to make proper restitution in any manner. Pursuant to Civil Code § 1782(d), Plaintiff prays for compensatory and punitive damages under the CLRA and CCP § 382 on behalf of herself and all similarly situated consumers, in an amount according to proof at trial.

32. As a direct and proximate result of Defendants' violations of the CLRA as alleged herein, Plaintiff, the general public, and the Plaintiff Class have suffered actual damages in an amount to be proven at trial, including, *inter alia*:

A. the infringement of their legal rights as a result of being subjected to the common course of conduct alleged herein;

B. Plaintiff and the Class were induced to purchase Auto Cool from Defendants, which they would not have done had they been fully informed of Defendants' acts, omissions, misrepresentations, practices and nondisclosures as alleged in this Complaint, in violation of, *inter*

C. Plaintiff and the members of the Class were induced to rely on Defendants' deceptive representations and omissions to their detriment as a result of Defendants' conduct as alleged in this Complaint, in violation of, *inter alia*, the CLRA.

33. Defendants' acts, statements, representations, policies and procedures as described herein were knowingly deceptive and were made with conscious disregard of the effects upon consumers. Defendants are required by law to make adequate disclosure of the true effects of their goods to potential consumers. Defendants failed to do so in order to conceal their acts, omissions, misrepresentations, practices and nondisclosures as alleged in this Complaint, and to induce customers to purchase their Auto Cool product from Defendants. Accordingly, Defendants engaged in acts of fraud, malice and oppression or in conscious disregard of the rights or safety of Plaintiff and members of the Plaintiff Class such that an award of punitive damages is justified in order to make an example of Defendants, to punish Defendants, and to deter Defendants, and others, from engaging in the same or similar conduct. Plaintiff, and the members of the Plaintiff Class, seek an award of punitive damages in an amount according to proof at trial.

FOURTH CAUSE OF ACTION

Fraud in the Inducement

(Against All Defendants)

34. Plaintiff, on behalf of herself, the general public, and all others similarly situated, realleges, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 33 hereof.

35. The Defendants made material representations and omissions to Plaintiff which included but were not limited to the statements that Auto Cool is a cooling ventilation system that claims to keep your car cooler no matter how long it has been left in the sun and that Auto Cool uses solar power to keep the heat out. In fact, the name of the product itself is deceptive, "Auto Cool", as it does not keep your auto cool. Defendants knew these representations were false or should have known them to be false.

36. The Defendants intended that Plaintiff rely on said representations in Plaintiff's decision

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to purchase their Auto Cool product.

37. The Plaintiff justifiably relied on the representations, and has performed all of the actions requested of her.

38. Despite this, Plaintiff was damaged thereby as a direct result of Defendants' misrepresentations, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, the general public, and the Class, pray for judgment against Defendants as follows:

1. for an order requiring Defendants to identify each purchaser of one or more Auto Cool(s) and to directly refund to that purchaser the price paid, plus any and all related costs associated with said purchase such as taxes, shipping and handling;

2. for other injunctive and equitable relief under California statutory law, including but not limited to, restitution and disgorgement, as alleged herein;

3. for compensatory and punitive damages against Defendants for violation of the CLRA if Defendants do not comply with the CLRA demand letter in a timely fashion in an amount according to proof at trial;

4. for compensation, punitive and exemplary damages against Defendants in an amount according to proof at trial and sufficient to punish Defendants and to deter others from similar wrongdoing;

5. that Plaintiff and other members of the Plaintiff Class recover their costs of suit, including reasonable attorney's fees; and

6. for such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMAND

A jury trial in this matter is hereby demanded.

LAW OFFICES OF ALEXANDER M. SCHACK

Dated: October 4, 2007

Alexander M. Schack
Attorneys for Plaintiffs

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